

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MICHAEL A. VALERIO and DEPARTMENT OF THE NAVY,
PHILADELPHIA NAVAL SHIPYARD, Philadelphia, Pa.

*Docket No. 97-2313; Oral Argument Held June 16, 1998;
Issued September 4, 1998*

Appearances: *I. Michael Luber, Esq.*, for appellant; *Paul J. Klingenberg, Esq.*,
for the Director, Office of Workers' Compensation Programs.

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
BRADLEY T. KNOTT

The issue is whether the Office of Workers' Compensation Programs properly terminated appellant's compensation effective July 1, 1996 on the grounds that he had no disability due to his February 28, 1995 employment injury after that date.

The Board finds that the Office properly terminated appellant's compensation effective July 1, 1996 on the grounds that he had no disability due to his February 28, 1995 employment injury after that date.

Under the Federal Employees' Compensation Act,¹ once the Office has accepted a claim it has the burden of justifying termination or modification of compensation benefits.² The Office may not terminate compensation without establishing that the disability ceased or that it was no longer related to the employment.³ The Office's burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.⁴

In the present case, the Office determined that there was a conflict in the medical opinion between Dr. Ronald Rosenfeld, appellant's attending Board-certified orthopedic surgeon, and the government physician, Dr. James Anthony, a Board-certified orthopedic surgeon acting as an

¹ 5 U.S.C. §§ 8101-8193.

² *Charles E. Minniss*, 40 ECAB 708, 716 (1989); *Vivien L. Minor*, 37 ECAB 541, 546 (1986).

³ *Id.*

⁴ *See Del K. Rykert*, 40 ECAB 284, 295-96 (1988).

Office referral physician, on the issue of whether appellant continued to have residuals of his February 28, 1995 employment injury.⁵ In order to resolve the conflict, the Office properly referred appellant, pursuant to section 8123(a) of the Act, to Dr. E. Balasubramanian, a Board-certified orthopedic surgeon, for an impartial medical examination and an opinion on the matter.⁶ By decision dated July 1, 1996, the Office terminated appellant's compensation effective that date on the grounds that appellant had no disability due to his February 28, 1995 employment injury after that date.⁷ By decision dated April 11, 1997, an Office hearing representative affirmed the Office's July 1, 1996 decision.

In situations where there exist opposing medical reports of virtually equal weight and rationale and the case is referred to an impartial medical specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background, must be given special weight.⁸

The Board finds that the weight of the medical evidence is represented by the thorough, well-rationalized opinion of Dr. Balasubramanian, the impartial medical specialist selected to resolve the conflict in the medical opinion. The October 23, 1995 report of Dr. Balasubramanian establishes that appellant had no disability due to his February 28, 1995 employment injury after July 1, 1996.

The Board has carefully reviewed the opinion of Dr. Balasubramanian and notes that it has reliability, probative value and convincing quality with respect to its conclusions regarding the relevant issue of the present case. Dr. Balasubramanian's opinion is based on a proper factual and medical history in that he had the benefit of an accurate and up-to-date statement of accepted facts, provided a thorough factual and medical history and accurately summarized the relevant medical evidence.⁹ Moreover, Dr. Balasubramanian provided a proper analysis of the factual and medical history and the findings on examination, including the results of diagnostic testing, and reached conclusions regarding appellant's condition which comported with this analysis.¹⁰ Dr. Balasubramanian provided medical rationale for his opinion by explaining that appellant's physical examination and the results of diagnostic testing showed that appellant no

⁵ The Office accepted that on February 28, 1995 appellant sustained an aggravation of the onwork-related dislocation of his left shoulder in 1991. In a report dated June 5, 1995, Dr. Anthony indicated that appellant's left shoulder problems were no longer related to his February 28, 1995 employment injury. In various reports, Dr. Rosenfeld indicated that appellant's left shoulder problems continued to be employment related.

⁶ Section 8123(a) of the Act provides in pertinent part: "If there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination." 5 U.S.C. § 8123(a).

⁷ The Office based its termination on the opinion of Dr. Balasubramanian.

⁸ *Jack R. Smith*, 41 ECAB 691, 701 (1990); *James P. Roberts*, 31 ECAB 1010, 1021 (1980).

⁹ Although Dr. Balasubramanian indicated that appellant sustained a soft-tissue injury to his left shoulder at work on February 28, 1995, he also expressed an understanding that appellant suffered a dislocation of his left shoulder on that date.

¹⁰ See *Melvina Jackson*, 38 ECAB 443, 449-50 (1987); *Naomi Lilly*, 10 ECAB 560, 573 (1957).

longer had residuals of his February 28, 1995 employment injury. He explained appellant's continuing symptoms by indicating that they were related to his nonwork-related shoulder injury in 1991 and noted that appellant's February 28, 1995 injury was of a temporary nature.¹¹

The decision of the Office of Workers' Compensation Programs dated April 11, 1997 is affirmed.

Dated, Washington, D.C.
September 4, 1998

Michael J. Walsh
Chairman

Willie T.C. Thomas
Alternate Member

Bradley T. Knott
Alternate Member

¹¹ Appellant submitted additional medical reports, including reports of Dr. Rosenfeld, which were produced after Dr. Balasubramanian's evaluation and which contained opinions that his left shoulder problems continued to be employment related. These reports, however, are of limited probative value on the relevant issue of the present case in that they do not contain adequate medical rationale in support of their opinions on causal relationship; *see George Randolph Taylor*, 6 ECAB 986, 988 (1954) (finding that a medical opinion not fortified by medical rationale is of little probative value).